IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2526 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

MOHAMMAD RAFIQ BABUBHAI @ VALLI MOHD.

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2526 of 2003

MR MHM SHAIKH for Petitioner No. 1

MR GULAMRASUL SHAIKH for Petitioner No. 1

MR ND GOHIL APP for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 09/05/2003

ORAL JUDGEMENT

1. This application under section 482 of the Code of Criminal Procedure is made with a view to obtaining interim custody of muddamal rikshaw No.GJ-7-V-9384 which is claimed to be belonging to the applicant and which was taken into police custody pursuant to the offences registered as C.R. No.13 of 2002 in D.C.B. (Crime) Police Station. It appears that the offences punishable under sections 120-B, 119 and 202 of the Indian Penal Code and the provisions of the Arms Act as also the Explosive Substances Act were reported in the aforesaid F.I.R.

2. It is the case of the petitioner that the petitioner is not named in the F.I.R. and, after his application for recovery of the vehicle being rejected by the learned Metropolitan Magistrate, Court No.11, Ahmedabad, Criminal Revision Application Nos.26 of 2003 and 111 of 2002 have also been rejected. It was submitted that, although, as recorded in the latter judgment in Criminal Revision Application No.26 of 2003, the applicant had established, by producing the R.T.O. Registration Book, his ownership of the vehicle, his prayer was rejected only on the ground of that being a second revision application.

3. The learned A.P.P. submitted that, apart from the technical objections, the vehicle in question was found to have been used in connection with serious offences and, if at all it were required to be released in the interest of justice, strict conditions were required to be imposed for preventing its re-use for such purpose and to ensure its availability in the same condition at the time of trial. Responding to that, the learned counsel for the petitioner submitted that the petitioner was prepared to give sufficient surety and undertake to abide by the conditions that may be imposed while releasing the vehicle. A recent judgment of the Supreme Court in SUNDERBHAI AMBALAL DESAI v. STATE OF GUJARAT reported in 2003 (1) GLH 307 was relied upon to submit that such properties were required to be handed over to the rightful owner after preparing a detailed and proper panchnama, taking photographs of such articles and execution of bond that such articles would be produced if required at the time of trial and after taking proper security. It is also observed that the Courts should see that photographs of such articles are attested or countersigned by the claimant as well as other parties concerned and still it would be the function of the court under section 451 of the Cr.P.C. to impose any other appropriate condition. It is further observed that it is of no use to keep seized vehicles at the police stations

for a long period and it is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as the security for return of the vehicles if required at any point of time. That can be done even pending hearing of the application for return of such vehicles.

4. In view of the above observations of the Supreme Court and in the facts and circumstances of the case, it is necessary and in the interest of justice that the petitioner should be handed over the custody of the vehicle on such terms and conditions as may be necessary in light of the aforesaid observations of the Supreme Court. Therefore, the petition is allowed and the order dated 26.7.2002 passed by the learned Metropolitan Magistrate, Court No.11, Ahmedabad and the order dated 28.2.2003 of the learned Additional City Sessions Judge, Court No.8, Ahmedabad in Civil Revision Application No.26 of 2003 and the order dated 21.11.2002 of the learned Additional Sessions Judge, Court No.19, Ahmedabad City in Criminal Revision Application No.111 of 2002 are set aside with a direction to the learned Metropolitan Magistrate, Court No.11, Ahmedabad to release the vehicle, i.e. rikshaw No.GJ-7-V-9384, to the petitioner subject to such conditions as may be found to be necessary in the facts of the case and in light of the aforesaid judgment of the Supreme Court so as to ensure the availability and identification of the vehicle at the time of trial as also after taking proper security and bond from the claimant. Rule is made absolute accordingly with no order as to costs. Direct Service is permitted.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)